

40 KAR 2:230. Prehearing procedure for rejection of application for more than two (2) going-out-of-business sales during a four (4) year period.

RELATES TO: KRS 365.447

STATUTORY AUTHORITY: KRS 15.180, 365.447, 367.150(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.447 requires in pertinent part the Office of the Attorney General, Division of Consumer Protection, to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth initial procedures for a due process hearing for the appeal by the applicant of a denial of an application for a permit to conduct more than two (2) going-out-of-business sales in a four (4) year period pursuant to KRS 365.447.

Section 1. Notice of Denial and Request for a Hearing. (1) Upon denial of the applicant's request for a permit to conduct a subsequent sale in excess of two (2) going-out-of-business sales in a four (4) year period, the Attorney General shall send by registered or certified mail written notice stating that the application has been denied. The grounds for the denial shall be set forth in the notice.

(2) Within seven (7) calendar days after receiving the notice of denial of the application for a subsequent permit after having conducted two (2) going-out-of-business sales within a four (4) year period, the applicant may request a hearing. The request shall be made to the Attorney General, Division of Consumer Protection.

(3) The hearing shall be held within thirty (30) calendar days of the Attorney General's receipt of the request for a hearing.

Section 2. Motions, requests, filings, and other material filed with the hearing officer shall:

- (1) Be served on the other party by certified mail, return receipt requested; and
- (2) Contain a signed statement that service on the other party has been made.

Section 3. Witnesses. A party shall file a list of his witnesses:

- (1) With the hearing officer;
- (2) At least ten (10) days prior to the hearing.

Section 4. Subpoenas. (1) A party shall file a written request to the hearing officer at least twenty (20) days prior to a hearing if he/she wishes to:

- (a) Subpoena a witness; or
- (b) Require the production of a document.
- (2) The request shall contain the:
 - (a) Name and address of residence and place of employment, including county, of the witness;
 - (b) Name the document or item, with a description sufficient to identify the document or item.

Section 5. Continuance. (1) A hearing may be continued by the hearing officer:

- (a) To permit any prehearing procedures; or
- (b) For other good cause.
- (2) If it is necessary to continue a hearing, the hearing officer shall:
 - (a) Reschedule the hearing; and
 - (b) Notify the parties.
- (3) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the hearing officer at least seven (7) working days before the hearing.
- (4) A motion for continuance may be filed upon the occurrence of an emergency.
- (5) The hearing officer shall notify a party of his decision in writing.

Section 6. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:

- (a) On his own motion; or
- (b) Upon motion of a party.
- (2) The hearing officer shall schedule a prehearing conference if he/she determines that it will:
 - (a) 1. Establish stipulations;
 - 2. Clarify issues;
 - 3. Identify witnesses;
 - 4. Resolve issues relating to:
 - a. Evidence;
 - b. Subpoenas;
 - c. Discovery; or
 - d. Protective orders; and
 - (b) Otherwise promote the orderly and prompt conduct of the hearing; or
 - (c) Promote settlement of the issues.
- (3) If the hearing officer schedules a prehearing conference, he/she shall notify the parties in writing:
 - (a) Of the date, time and place of the prehearing conference; and
 - (b) That they are required to attend the prehearing conference.
- (4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.
- (b) A copy of the prehearing order shall be mailed to the parties.

Section 7. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.

(2) The request shall:

- (a) Specify the type of discovery requested;
- (b) Where applicable, describe in sufficient detail:
 - 1. Names and addresses of persons or items;
 - 2. Documents, other items, or places; and
- (c) State the reason discovery is requested.
- (3) Discovery may be obtained by:
 - (a) Written or oral depositions;
 - (b) Interrogatories;
 - (c) Production or inspection of documents or things;
 - (d) Permission to photograph, or enter upon land or other property; or
 - (e) Physical or mental examinations.

Section 8. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to the denial of the application.

(2) A settlement agreement:

- (a) Shall be subject to approval by the hearing officer; and
- (b) If approved by the hearing officer, shall constitute:
 - 1. A waiver of a party's right to an administrative hearing; and
 - 2. The final order of the hearing officer.

Section 9. Motions. A motion shall be:

- (1) In writing;
- (2) Signed; and

(3) Filed with the hearing officer. (21 Ky.R. 705; Am. 1294; eff. 10-12-94.)